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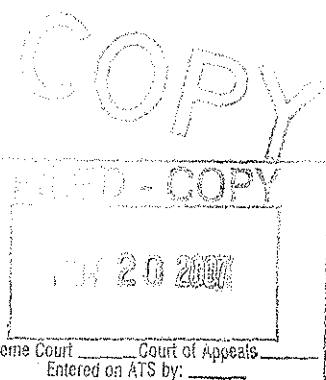
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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,
Plaintiff-Respondent,
v.
COREY SEAN FREDERICK,
Defendant-Appellant.

NO. 33575

REPLY BRIEF



REPLY BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE THIRD JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF CANYON

HONORABLE JUNEAL C. KERRICK
District Judge

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STATEMENT OF THE CASE

Nature of the Case

Corey Shawn Frederick appeals from the district court's denial of his motion to suppress. On appeal, Mr. Frederick argued that *New York v. Belton*, 453 U.S. 454 (1981) (*hereinafter, Belton*) should be strictly limited to the facts of that case and this Court should adopt Justice Scalia's concurrence in *Thornton v. United States*, 541 U.S. 615 (2004). The instant reply brief is necessary to address the State's argument on appeal that Mr. Frederick did not properly preserve the federal constitutional argument for appeal.

Statement of the Facts and Course of Proceedings

The Statement of the Facts and Course of Proceedings were previously articulated in Mr. Frederick's Appellant's Brief. They need not be repeated in this Reply Brief, but are incorporated herein by reference thereto.

ISSUE

Did Mr. Frederick properly preserve his claim that his Fourth Amendment rights under the United States Constitution were violated when his vehicle was searched without a warrant?

ARGUMENT

I.

Mr. Frederick Properly Preserved His Claim That His Fourth Amendment Rights Under The United States Constitution Were Violated When His Vehicle Was Searched Without A Warrant

A. Introduction

Mr. Frederick's claim, that his Fourth Amendment rights were violated because his vehicle was searched without a warrant was raised below, argued by defense counsel, and directly considered and decided by the district court.

B. Mr. Frederick Properly Preserved His Claim That His Fourth Amendment Rights Under The United States Constitution Were Violated When His Vehicle Was Searched Without A Warrant

In its briefing, the State argues, "Frederick's appellate claim requesting a change in the law relating to Fourth Amendment searches of vehicles is fundamentally different than his claim in district court that a search was not justified on the facts because the contact occurred outside the vehicle." (Respondent's brief, p.7.) The State is incorrect as Mr. Frederick met his initial burden to show the search was conducted without a warrant, argued that the search incident to arrest was unjustified, and the district court properly analyzed the issue below under *Belton*.

The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV; Idaho Const. Art. I, § 17. "Warrantless searches are **presumptively unreasonable** and the State bears the burden to demonstrate that a **warrantless search either fell within a well-recognized exception to the warrant requirement** or was otherwise reasonable under the circumstances." *State v. Martinez*,

129 Idaho 426, 431, 925 P.2d 1125, 1130 (Ct. App. 1996) (citation omitted) (emphasis added). Accordingly, "searches and seizures 'conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment—subject only to a few specifically established and well delineated exceptions.'" *Minnesota v. Dickerson*, 508 U.S. 366, 372 (1993) (quoting *Thompson v. Louisiana*, 469 U.S. 17, 19-20 (1984)).

First of all, Mr. Frederick met his burden to show that the search in the instant case was done without a valid warrant, **thereby shifting the burden to the State**, to present evidence that the search fell within a well-recognized exception to the search warrant. (Tr., p.5, L.4 – p.12, L.18 (testimony of Officer Cullen describing his arrest of Mr. Frederick); p.12, L.19 – p.12, L.11 (testimony of Officer Cullen describing the warrantless search of Mr. Frederick's vehicle).) After meeting his burden, Mr. Frederick then argued that the warrantless search of his vehicle, "incident to arrest," was not properly confined to his lunge area. (Tr., p.37, L.25 – p.39, L.12 (discussion of the search incident to arrest rule by defense counsel).) Defense counsel then argued, "There's a reason for that and the reason I went over how police officers have obtained this right to search inside the car. It's based on that search incident to arrest of the person on the wingspan, on the lunge area." (Tr., p.39, Ls.13-17.) Defense counsel then concluded, "Your honor, because this search was not done pursuant to a warrant, **because it was not authorized by the search incident to arrest rule**, it was an unauthorized, unlawful search." (Tr., p.40, Ls.6-9.)

Finally, the district court properly recognized the argument made by defense counsel and addressed it below. During its ruling below, the district court first

recognized the *Belton* Rule that "The United States Supreme Court has developed a narrow bright-line test regarding search of automobiles incident to arrest." (Tr., p.48, Ls.9-12.) The district court continued on discussing the applicability of the *Belton* Rule and that *Belton* "in no way alters the fundamental principles established in the *Chimel* case regarding the basic scope of searches incident to lawful custodial arrest." (See Tr., p.48, L.12 – p.50, L.2.) The Court concluded that "this was a search incident to arrest, and it was a search incident to arrest of a person who was formerly an occupant of a car." (Tr., p.50, Ls.7-10.) The district court then further addressed the applicability of *Belton* to the instant situation and even analyzed the case under *Thornton v. United States*, 541 U.S. 615 (2004), which of course, is thoroughly discussed in Appellant's Brief on appeal. (R., pp.47-55; see Appellant's Brief, pp.5-14.)

Thus, contrary to the State's assertion in its Respondent's Brief, Mr. Frederick is addressing the same issue on appeal, the search of his vehicle incident to his arrest, as was raised by defense counsel below and addressed by the district court.

CONCLUSION

Mr. Frederick respectfully requests that this Court vacate the district court's order denying his motion to suppress and remand his case for further proceedings.

DATED this 20th day of November, 2007.


ERIC D. FREDERICKSEN
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

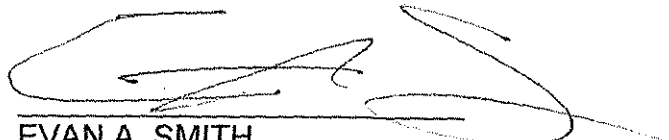
I HEREBY CERTIFY that on this 20th day of November, 2007, I served a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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